

A 1% sales tax rate, plus any applicable local taxes, is applied to food sold for human consumption to be consumed off the premises where sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), drugs, medicines and medical appliances. See 86 Ill. Adm. Code 130.310. (This is a GIL).

June 28, 2001

Dear Xxxxx:

This letter is in response to your letter received by our office on April 30, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

AAA requests a formal letter of opinion concerning the situation described below:

AAA sells various food and related items to Hotel/Motel and Bed and Breakfast operators. The food may be further processed, such as cereal which may be cooked, or food in its finished state, such as boxed cereal, milk and apples. AAA also sells serving items (disposable plasticware, cups, paper napkins) to these customers.

In all cases, AAA's customers use both the food and the serving items **exclusively for the purpose** of serving complementary meals to their guests. **These operators make no separate charge to their guests for these meals.** The lodging charge to the guest is the same whether or not the guest avails him/herself of the complementary food and serving items. AAA has nexus in all states. The questions:

Is AAA obligated to charge sales tax on the food sold to its Hotel/Motel or Bed and Breakfast customers in the above scenario? Is there a distinction between food items sold in their finished form versus those requiring cooking or other processing?

If food is taxable in this situation, what is the correct rate?

Is AAA obligated to charge sales tax on the disposable serving items sold to its Hotel/Motel or Bed and Breakfast customer in the above scenario?

Thank you for your written response. I may be reached if there are questions.

## DEPARTMENT'S RESPONSE:

In situations when a hotel/motel or bed and breakfast are providing complimentary meals to their guests, the hotel/motel or bed and breakfast is considered the user of those meals for sales and use tax purposes. The hotel/motel or bed and breakfast incurs a Use Tax liability on the purchase price (cost price) of those meals. See the enclosed copy of 86 Ill. Adm. Code 150.101.

Please find enclosed a copy of the Department's regulation on the reduced tax rate under the Retailers' Occupation Tax Act applicable to food, drugs, medicines and medical appliances, 86 Ill. Adm. Code 130.310. A 1% sales tax rate, plus any applicable local taxes, is applied to food sold for human consumption to be consumed off the premises where sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), drugs, medicines and medical appliances. Food that is prepared for immediate consumption and items that do not qualify as drugs, medicines and medical appliances are taxed at the regular state sales tax rate of 6.25%, plus any applicable local taxes. The sales of food referenced in your letter would generally qualify for the low (1%) rate of tax (unless those sales are of alcoholic beverages or soft drinks).

Based upon the information in your letter, the hotels/motels or bed and breakfasts are using the serving items (disposable plasticware, cups, and paper napkins) to serve the meals to their guests. In that situation, the hotels/motels or bed and breakfasts incur a Use Tax liability on the purchase price of those items. See Section 150.101.

If the sales discussed above occur in this State, the seller will incur Retailers' Occupation Tax on the gross receipts from those sales and will be required to collect their customers' Use Tax liability on their purchases. If the sales occur outside this State, but the seller has nexus with this State, the seller is required to collect its Illinois customers' Use Tax liability and remit that tax to the State. See 86 Ill. Adm. Code 150.801.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.